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5 UNITED STATES DISTRICT COURT
 6 EASTERN DISTRICT OF WASHINGTON
 (HONORABLE LONNY R. SUKO)

7 UNITED STATES OF AMERICA,)
 8)
 Plaintiff,) CR-06-2080-LRS
 9)
 vs.) ORDER GRANTING MOTION TO
 10) DISMISS
 JUAN MANUEL MAGANA-ALVAREZ,)
 11)
 Defendant.)
 12)

13 Before the Court is the Defendant's Motion to Dismiss (Ct. Rec.
 14 28). As set forth in his motion, the removal listed in the indictment
 15 cannot be used as a basis for an 8 U.S.C. § 1326 prosecution because
 16 the reinstatement procedure employed for this removal was ultra vires;
 17 the removal was issued by an immigration officer who lacked power to
 18 do so.

19 Additionally, the removal listed in the indictment cannot be used
 20 as a basis for an 8 U.S.C. § 1326 prosecution because the December 10,
 21 1997, order of removal, which the August 22, 2001, order of removal
 22 sought to reinstate, did not comport with due process. Given these
 23 flaws, the present indictment must be dismissed.

24 Based upon the foregoing, **IT IS HEREBY ORDERED** that Defendant's
 25 Motion to Dismiss (Ct. Rec. 28) is **GRANTED**. The indictment in this
 26 case is dismissed with prejudice.
 27
 28

ORDER

